

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

PRODUCERS AGRICULTURE  
INSURANCE COMPANY,

Petitioner,

v.

DAVID FINNEMAN,

Respondent.

CASE NO.: 5:22-CV-5062

**PETITION TO VACATE OR, IN THE  
ALTERNATIVE, NULLIFY ARBITRATION AWARD**

COMES NOW Producers Agriculture Insurance Company (“ProAg”) and petitions this Court to vacate or, in the alternative, nullify an award rendered on June 20, 2022, in the matter of an arbitration between David Finneman (“Finneman”) and ProAg. In further support of this petition, ProAg would show the following:

1. ProAg is a Texas-domiciled insurance company with its principal place of business located at 5601 Interstate 40 W, Suite 204, Amarillo, Texas 79106. ProAg is authorized to transact business and has transacted business in South Dakota.
2. Finneman is an adult resident and citizen of Pennington County, South Dakota.
3. The district court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), as there exists complete diversity of citizenship between the Plaintiff (a citizen of Texas) and the Defendant (a citizen of South Dakota), and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

4. As noted, Finneman is a resident of Pennington County, which is within the Western Division of the District of South Dakota. Venue is therefore proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Effective for the 2017 insurance year, ProAg issued to Finneman a Whole-Farm Revenue Protection (“WFRP”) policy.

6. WFRP policies are governed by the Federal Crop Insurance Act, 7 U.S.C. § 1501 et seq., and attendant regulations published at Title 7, Subtitle B, Chapter IV of the Code of Federal Regulations.

7. WFRP coverage is governed in part by a standard form insurance contract known as the Whole-Farm Revenue Protection Pilot Policy (“WFRP Pilot Policy”). A true and correct copy of the WFRP Pilot Policy in force for the 2017 insurance year is attached as Exhibit 1.

8. The preamble to the WFRP Pilot Policy specifies that:

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501-1524) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours, or any employee of the United States Department of Agriculture (USDA). We will use the procedures, including but not limited to handbooks, manuals, memoranda, and bulletins, as issued by FCIC and published on the Risk Management Agency (RMA’s) web site at <http://www.rma.usda.gov/> or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted under this policy.

9. Section 33(a) of the WFRP Pilot Policy provides that (subject to two exceptions, neither of which is applicable in this instance) all disputes relating to the insurer’s determinations under the policy “must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA).”

10. While requiring arbitration of disputed determinations, the WFRP Pilot Policy precludes an arbitrator from interpreting the policy or the procedures used in administering the policy. Specifically, section 33(a)(1) of the WFRP Pilot Policy states: “[I]f the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.”

11. Finneman disputed certain determinations rendered by ProAg with respect to his 2017 WFRP policy.

12. In accordance with section 33(a) of the WFRP Pilot Policy, these disputes were submitted to a privately-administered arbitration, which was conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

13. Finneman and ProAg selected Minneapolis attorney David Allgeyer to serve as the arbitrator.

14. The arbitrator issued his Findings, Determinations, and Award (the “Award”) on June 20, 2022. A true and correct copy of the Award is attached as Exhibit 2.

15. In rendering the Award, the arbitrator exceeded the authority granted him under section 33(a)(1) of the WFRP Pilot Policy. Specifically, the arbitrator impermissibly interpreted the WFRP Pilot Policy as well as the FCIC procedures set forth in the WFRP Pilot Handbook. The arbitrator also failed to follow existing FCIC interpretations by basing his decision on equitable principles and disregarding the policy’s non-waiver language.

**VACATUR UNDER THE FEDERAL ARBITRATION ACT**

16. The Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, governs arbitrations conducted in accordance with contracts affecting interstate commerce.

17. The WFRP contract between Finneman and ProAg affects interstate commerce and thus the FAA standards for confirmation, vacatur, modification, and correction of arbitral decisions apply in this instance.

18. Section 10(a) of the FAA prescribes the grounds on which an arbitral decision may be vacated, stating:

In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

19. The arbitrator exceeded his powers by impermissibly engaging in interpretation of the WFRP Pilot Policy and the FCIC procedures set forth in the WFRP Pilot Handbook

20. The arbitrator also exceeded his powers by failing to adhere to existing interpretations rendered by the FCIC in regard to disputed provisions of the WFRP Pilot Policy.

21. ProAg therefore requests vacatur of the Award under section 10(a) of the FAA.

**NULLIFICATION UNDER SECTION 33(A)(1)(ii) OF THE  
WFRP PILOT POLICY AND 7 C.F.R. PART 400 SUBPART X**

22. Section 33(a)(1)(ii) of the WFRP Pilot Policy states: “Failure to obtain, or comply with, any required interpretation from FCIC will result in the nullification of any agreement or award.”

23. Additionally, 7 C.F.R. § 400.766(b)(3) provides that “[f]ailure to request an FCIC interpretation when required by this subpart or failure of ... arbitrator ... to adhere to the final agency determination or FCIC interpretation provided under this subpart will result in the nullification of any award or agreement in arbitration or mediation in accordance with the provisions in the ‘Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review’ section or similar section in all crop insurance policies.

24. Finally, 7 C.F.R. § 400.766(b)(4) permits a party to seek FCIC review of an arbitration award for a determination of whether the award was rendered in violation of subpart (b)(3) and the policy limitations on arbitral authority; it states:

If either party believes an award or decision was rendered by NAD, arbitrator, mediator, or judge based on a disputed provision in which there was a failure to request a final agency determination or FCIC interpretation or NAD, arbitrator, mediator, or judge's decision was not in accordance with the final agency determination or FCIC interpretation rendered with respect to the disputed provision, the party may request FCIC review the matter to determine if a final agency determination or FCIC interpretation should have been sought in accordance with § 400.767.

...

(ii) If FCIC determines that a final agency determination or FCIC interpretation should have been sought and it was not, or the decision was not in accordance with the final agency determination or FCIC interpretation rendered with respect to the disputed provision:

(A) The award is automatically nullified; and

(B) Either party may appeal FCIC's determination that a final agency determination or FCIC interpretation should have been sought and it was not, or the decision was not in accordance with the final agency determination or FCIC interpretation rendered with respect to the disputed provision to NAD in accordance with 7 CFR part 11.

25. Thus, both the WFRP Pilot Policy under which the arbitrator derived his authority and the regulations implemented by the FCIC at 7 C.F.R. part 400, subpart X provide for nullification of an award when a required FCIC interpretation is not sought or an existing FCIC interpretation is disregarded. Nullification occurs “automatically” upon issuance of an FCIC determination that an interpretation was not sought or followed.

26. On July 18, 2022, ProAg requested the FCIC to review the Award and issue a determination under section 400.766(b)(4) in support of automatic nullification. A true and correct copy of said request is attached as Exhibit 3.

27. As an alternative to its request for vacatur under section 10(a) of the FAA, ProAg requests the Court to nullify the Award upon issuance of a determination by the FCIC that a required interpretation was not sought and/or that an existing interpretation was disregarded.

WHEREFORE, PREMISES CONSIDERED, ProAg respectfully requests that the Court enter an order vacating the Award in accordance with section 10(a) of the FAA. Additionally, or in the alternative, ProAg requests the Court, upon issuance of a determination by the FCIC that an interpretation should have been sought and it was not, or that the Award was not in accordance with an existing interpretation, enter an order nullifying the Award in accordance with section 33(a)(1)(ii) of the WFRP Pilot Policy and 7 C.F.R. § 400.766(b)(4)(ii)(A). ProAg also requests such further and general relief as may be proper in the premises.

Dated this 19th day of July, 2022.

SIEGEL, BARNETT & SCHUTZ, L.L.P.

/s/ Reed Rasmussen

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Reed Rasmussen  
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JS 44 (Rev. 04/21)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Producers Agriculture Insurance Company

(b) County of Residence of First Listed Plaintiff Potter County, TX  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Reed Rasmussen - Siegel, Barnett & Schutz, LLP - POB  
490 - Aberdeen, SD 57402--0490 - Ph: (605) 225-5420**DEFENDANTS**

David Finneman

County of Residence of First Listed Defendant Pennington, SD  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Wendell L. Hoskins II - Law Office of Wendell L. Hoskins II -  
POB 1115 - Caruthersville, MO 63830 - Ph: (573) 333-2600**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>LABOR</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input checked="" type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332(a)(1) (Diversity) & 9 U.S.C. § 10(a) (Vacatur of Arbitration Award)

Brief description of cause:

Petition for Vacatur or, in the Alternative, Nullification of Arbitration Award

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

Vacature of arb. award

CHECK YES only if demanded in complaint:

**JURY DEMAND:**☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

July 19, 2022

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_